IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4260 OF 2007

Mahadeo Kondopant Kumthekar ..Petitioner
versus
Mangesh Metal Processors Pvt. Ltd. ..Respondent

Mr. V. G. Mujumdar for the Petitioner.

CORAM : S. A. BOBDE, J.
DATE : 19TH OCTOBER, 2007.

P.C.

. The petitioner in this petition has challenged the Order of the Additional Commissioner, Pune Division, Pune, allowing the respondent's Revision against the order dated 9.1.2006 of the Competent Authority (Rent Act), Pune Division, Pune. The Competent Authority had held that the respondent - tenant had not obtained leave to defend the landlords' application within 30 days as stipulated by Section 43 of the Rent Act. Section 43 prescribes a special procedure for recovery of possession by the landlord. Sub Section 4(a) which is relevant in this case reads as follows:-

> "The tenant or licensee on whom the summons is duly served in the ordinary way or by

> registered post must within 30 days of the service of summons file an affidavit stating the ground on which he seeks to contest the application for eviction and obtains leave from the Competent Authority."

2. The question in this case is, which of the two summons should be taken as the starting point of limitation for making an application for leave to contest.

3. In this case, the Competent Authority issued first summons on 20.5.2005 Under Certificate of Posting directing the respondent - petitioner to obtain leave of the Competent Authority to contest application for eviction. No intimation was received by the Competent Authority regarding service of the summons. Therefore, on 5.8.2005 on the insistence of the petitioner, the Competent Authority issued fresh summons on 3.10.2005 by Registered Post Acknowledgement Due. This was received by the respondent on 17.10.2005. On 20.10.2005 the revision applicants submitted a pursis that they would apply for leave to defend and accordingly made an application for leave to defend on 7.11.2005 well within 30 days.

4. However, the Senior Superintendent of RMS, Postal Authorities, wrote a letter dated 26.9.2005 and informed the Competent Authority that the first summons were delivered on 24.5.2005. Thereafter, on an application made by the petitioner, the Competent Authority chose to act on the date of service of the first summons i.e. 24.5.2005, and having found that no application for leave to defend was made within 30 days of the service of the first summons i.e. 24.5.2005 held that the respondent was not entitled to contest the application. This was done despite of the fact that the respondent had properly applied for leave to contest within 30 days of the service of the second summons.

5. The respondent therefore preferred a revision before the Additional Commissioner, Pune, who has reversed the Order of the Competent Authority and held that the respondent had applied for leave to contest within the time stipulated by law upon the service of the second summons. The Revisional Authority found that the second summons was issued because the first summons which were "Under Posting Certificate" were returned to have been delivered. Since it was not clear whether the

first summons had been "served" on the revision applicants or not, the Competent Authority had issued the second summons again on 3.10.2005 which was admittedly served on 17.10.2005. The Revisional Authority, in the circumstances held that the second summons which were served by Registered Post Acknowledgement Due should be taken as valid service for the purpose of reckoning the period within which the leave to contest should be filed.

6. There appears to be no reason to interfere with the order of the Revisional Authority. Sub Section 4(a) contemplates that the summons may be served in the ordinary way or by registered post. The ordinary way is provided by Order V of the Code of Civil Procedure. Rule 9 provides for delivery of summons, and, reads as follows:_

> "**9. Delivery of summons by Court.-** (1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him in such manner as the Court may direct.

(3) The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court:

. Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.

(4) Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the Court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) (except by registered post acknowledgement due), the provisions of rule 21 shall not apply.

(5) When an acknowledgement or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the

> summons had been duly served on the defendant:
>
> . Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgement due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgement having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.
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> (6) The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of sub-rule (1)."

Obviously, in the present case the first summons was not served in accordance with Rule 9 and was said to have been served Under Certificate of Posting; whereas the second summons has admittedly been served by Registered Post Acknowledgement Due. In the circumstances, the Revisional Authority has committed no error in accepting the service of the second summons as valid service for the purpose of computing the time within which leave to defend may be obtained and has in fact been obtained. Indeed, service of summons is an important procedural step which must be taken to have been complied with in accordance with the law.

7. In the circumstances, there is no reason to

interfere with the Order of the Revisional Authority. The Writ Petition is therefore dismissed.

(S.A. BOBDE, J.)